

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEREMY D. PETER-HOBLYN,
JAMES M. VALENTINE AND BARRY N. SPRAGUE

Appeal No. 2002-1882
Application 09/756,383

ON BRIEF

Before OWENS, LIEBERMAN and JEFFREY SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the nonfinal rejection of claims 1-20, which are all of the claims in the application.¹

THE INVENTION

The appellants claim a gasoline additive containing rhodium acetylacetonate and a fuel-soluble organoplatinum compound, and

¹ The board has jurisdiction because, including the parent application, the claims have been twice rejected. See 62 Fed. Reg. 50,131 at 53,167 (Oct. 10, 1997).

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claim a method for feeding a gasoline composition containing rhodium acetylacetonate and a fuel-soluble organoplatinum compound to an engine so as to renew or improve the performance of a three-way catalytic converter operated on the engine.

Claim 1, directed toward the composition, is illustrative:

1. A composition for adding to gasoline for the purpose of maintaining or improving the performance of a three-way catalytic converter, comprising a blend of rhodium acetylacetonate and a fuel-soluble organo-platinum compound.

THE REFERENCES

Bowers et al. (Bowers)	4,891,050	Jan. 2, 1990
Epperly et al. (Epperly)	5,034,020	Jul. 23, 1991

THE REJECTION

Claims 1-20 stand rejected under 35 U.S.C. § 103 over Bowers and over Bowers in view of Epperly.

OPINION

We affirm the aforementioned rejections.

The appellants state that the claims do not stand or fall together (brief, page 4). The appellants, however, do not provide a substantive argument as to why the claims are believed to be separately patentable. Accordingly, we limit our discussion to one claim, i.e., claim 1. See *In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7) (1997).

Bowers discloses a composition which is capable of being added to gasoline and includes at least one fuel-soluble platinum group metal compound (abstract; col. 3, lines 24-32). As platinum group metals, platinum in combination with palladium and/or rhodium is preferred (col. 5, lines 54-58). In an example a platinum coordination compound is used in combination with a rhodium coordination compound (col. 12, lines 40-41). The preference for, and exemplification of, platinum in combination with rhodium would have led one of ordinary skill in the art to use a combination of compounds of these metals. The teaching that "[w]here the platinum group metal compound, or one of the several such to be employed, is sensitive to moisture, e.g., metal acetylacetonates, it is important to maintain the moisture content of the solvent an [sic, and] total additive composition sufficiently low that no significant platinum group metal is precipitated" (col. 7, lines 27-32) would have fairly suggested, to one of ordinary skill in the art, using, as the platinum compound and/or the rhodium compound, an acetylacetonate.

The appellants' claimed invention, therefore, would have been *prima facie* obvious to one of ordinary skill in the art over Bowers, alone or in combination with Epperly.

The appellants argue that, because the examiner has not addressed on the record the level of skill in the art, the appellants have not been properly apprised of the reasons for rejection (brief, page 5). "While it is always preferable for the factfinder below to specify the level of skill it has found to apply to the invention at issue, the absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown.'" *Okajima v. Bourdeau*, 261 F.3d 1350, 1355, 59 USPQ2d 1795, 1797 (Fed. Cir. 2001), *reh'g & reh'g en banc denied*, 19 Fed. Appx. 881 (2001), *cert. denied*, 534 U.S. 1128 (2002) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163, 225 USPQ 34, 38 (Fed. Cir. 1985)). The appellants have not explained, and it is not apparent, why the applied prior art does not reflect an appropriate level of skill in the art.

The appellants argue that the technologies of the references are so different in their purposes and functions that one skilled in the art of one reference would not necessarily be skilled in the art of the other (brief, page 5). This argument is not well taken because both reference are directed toward platinum group metal compounds as gasoline additives.

The appellants argue that the claimed invention produces surprising and unexpected results, and that despite their efforts to present data comparing the claimed invention to the closest prior art, the examiner argues obviousness of the claimed invention (brief, pages 5-6). This argument is not convincing because the appellants do not rely in this appeal on any comparison of the claimed invention with prior art.

The appellants argue that the principle thrust of Bower is to use coordination compounds, and that the references do not suggest the use of the appellants' particular combination of coordination compounds (brief, page 6). As discussed above, Bower would have fairly suggested, to one of ordinary skill in the art, using a mixture of platinum acetylacetonate and rhodium acetylacetonate. As indicated by the appellants' claim 2, platinum acetylacetonate is among the appellants' fuel-soluble organoplatinum compounds. Regardless, even if one of ordinary skill in the art were to use one of Bower's other platinum compounds, the disclosure of using acetylacetonates of platinum group metals (col. 7, lines 27-29), which can be rhodium (col. 5, lines 55-56), and of a preference for using platinum compounds and rhodium compounds in combination (col. 5, lines 57-59), would have fairly suggested, to one of ordinary skill in the art, use

of rhodium acetylacetonate in combination with a platinum compound, regardless of whether the platinum compound is an acetylacetonate.

The appellants argue that there is no disclosure of using Bower's platinum group compounds with catalytic converters (brief, page 6). The teaching by Bowers that the gasoline preferably is unleaded (col. 4, lines 26-27) indicates that the platinum group compounds are capable of being added to gasolines which are to be combusted in engines having catalytic converters.

The appellants argue that there is nothing which suggests that a combination of a fuel-soluble organoplatinum compound and rhodium acetylacetonate would be effective in so many categories as shown in the appellants' example (brief, page 6). Use of the appellants additive in the four automobiles of the appellants' example (specification, page 7, line 27 - page 8, line 3) is not required by the appellants' claim 1.

For the above reasons we conclude that the appellants' claimed invention would have been obvious to one of ordinary skill in the art over the applied prior art.

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DECISION

The rejections of claims 1-20 under 35 U.S.C. § 103 over Bowers and over Bowers in view of Epperly are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

TERRY J. OWENS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
PAUL LIEBERMAN)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY T. SMITH)	
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